Award No. 6757
Docket No. CL-6868

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, amended September 1, 1949, particularly Rules 3-C-1(e), 4-A-1 (a) and 4-A-3, at the Wilkes-Barre, Pennsylvania, Freight Station, Susquehanna Division, by suspending three regular gangs on May 10, 1950, and five regular gangs on May 11, 1950.

(b) The tallymen and truckers, members of these gangs, each be allowed five hours' compensation, at the regular rates, for the dates affected. (Docket E-732)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representatives of the class or craft of employes in which the Claimants in this case held positions, and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, amended September 1, 1949, covering Clerical, Other Office, Station and Storehouse Employes, between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Title 1, Section 5, Third (e) of the Railway Labor Act and which has also been filed with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Carrier maintains five regular gangs at the Wilkes-Barre Freight Station. Gangs No. 1 and 2 report at Six A. M., and Gangs No. 3, 4 and 5 report at Eight A. M. On May 10, 1950, Gangs 1 and 2 worked eight hours. The other three gangs reported for work and were immediately suspended. Each man in the gang was allowed three hours' pay for this day.

On May 11, 1950, all five gangs reported for work at their regular starting times and all five were immediately suspended. Each man received three hours' pay for this date.

which began at 6:00 A. M., May 10, 1950, plainly constituted a condition "beyond the control of the Management" under Rule 4-A-7 of the applicable Agreement; that the members of the five regular gangs at the Wilkes Barre Freight Station here involved, were properly released from duty and compensated in the amount of three hours at the pro rata rate on May 10 and 11, 1950 under Rule 4-A-7 of the Agreement as a result of the firemen's strike; that Rules 3-C-1 (e), 4-A-1 (a) and 4-A-3 of the Agreement do not support the claims of the employes here before your Honorable Board; and that the claims in the present case are without foundation and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claims of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the members of the five regular gangs at the Wilkes Barre Freight Station properly were released from duty on May 10 and 11, 1950, in accordance with the provisions of Rule 4-A-7 of the applicable Agreement, and that the claims of the employes here before your Honorable Board are wholly without merit.

It is, therefore, respectfully submitted that the claims are not supported by the applicable Agreement and should be denied.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim, set forth at length in the record and for that reason not here repeated, was progressed and finally denied on the property upon a joint factual statement, hence the facts giving rise to the controversy are not in question and, so far as they go, must be accepted as controlling our disposition of the cause. This joint statement reads:

> "There are five regular gangs at Wilkes-Barre Freight Station. Gangs Nos. 1 and 2 report at 6:00 A. M. and Gangs Nos. 3, 4 and 5 report at 8:00 A. M. On May 10, 1950, Gangs Nos. 1 and 2 worked eight hours. The other gangs reported for work; but, due to the Firemen's strike, effective 6:00 A. M., May 10, 1950, no cars were placed for them to work, and they were immediately relieved. On May 11, 1950, all groups reported for work; but, as the strike was

still in effect and no cars had been placed at the freight station, they were again relieved. For reporting for duty and being relieved without performing any actual service, Claimants were allowed three hours' pay as provided in Rule 4-A-7."

Complementing the foregoing statement it is to be noted the record makes it appear that on the dates in question all Claimants involved were hourly rated employes assigned to regular positions with a regular starting time and place to report for duty.

Rule 4-A-7 of the Current Agreement, titled "Guarantee—hourly rated employes" is involved and should be quoted inasmuch as the Carrier has at all times relied thereon and consistently contended that action taken by it, as set forth in the heretofore quoted statement of facts, was warranted and permitted by its terms and provisions under the controlling facts as stipulated. Such rule reads:

"Hourly rated employes assigned to regular positions, who are required to report at a regular starting time and place for a day's work, and who are prevented from performing service by conditions beyond the control of the Management, will be allowed a minimum of three hours' pay at pro rata rates. If such employes are held on duty in excess of three hours they will be paid for the actual time so held. If required to work any part of the time so held and through no fault of their own are released before a full day's work is performed, they will be paid for not less than eight hours at the pro rata rate."

On the property Claimants took the position the phrase "conditions beyond the control of Management" as used in Rule 4-A-7 did not include strikes, hence such rule was neither applicable nor controlling, and that even if such phrase be so construed there were other rules in the agreement governing and controlling action of the character involved. Here Claimants make similar contentions although it may be stated the rule of the Agreement emphasized by them and on which they actually and specifically depend as precluding application of the rule relied on by Carrier is Rule 4-A-3, titled "Guarantee—regularly assigned employes", which, so far as it has to do with present issues, reads:

"(Effective September 1, 1949) The Working days per week for regularly assigned employes shall not be reduced below five unless agreed to by the Management and the General Chairman, except that this number may be reduced in a week in which holidays occur by the number of such holidays. . . ."

The gist of the first of the two primary contentions advanced by Claimants as a ground for sustaining their position is that "conditions beyond the control of Management" as they appear in Rule 4-A-7 must be construed as excluding "Acts of Men" and limited solely to "Acts of God." Otherwise and more simply stated they have no application to strikes called and placed in effect under the involved conditions and circumstances. Nothing would be gained and it would only burden our reports to labor arguments advanced by Claimants on the construction to be given the involved phrase, or others of like import, as used in Collective Bargaining Agreements. It, or others like it, have been submitted for interpretation and construed so often that the meaning to be given such language or other terms of like import, is no longer open to question. Under the sound and well reasoned Awards of this Division, to which we adhere, such language simply means that a strike such as here involved is beyond the control of Management. Therefore, contrary to Claimants' position, the Provisions of Rule 4-A-7 must be so construed and given that force and effect. For just a few of the many Awards of this Division construing similar language in like manner and therefore supporting the conclusion just announced, see Awards Nos. 3841; 3889; 4389; 4455; 5779;

6000; 6099; 6470 and 6471. The fact, as Claimants point out, that some of these decisions deal with the right to abolish positions in case of strikes has little if any bearing on the weight to be given them as decisive precedents in determining the import to be given language such as is here involved. The same holds true of arguments advanced to the effect a different import is to be given such language because it happens to appear in Rules different than the one here involved.

The second of the all decisive issues raised by Claimants has to do with three Rules of the Current Agreement, which they insist required Carrier to pay them a full day for May 10 and 11, 1950, and precluded application of Rule 4-A-7, in its entirety, including, of course, payment for three hours pursuant to its terms and provisions. One of these Rules (3-C-1 (e)) deals with the abolishment of positions and requires little, if any, attention. The fact it provides for the abolishment of positions, plus the fact Carrier took the precaution to abolish the positions in question, which we pause to note is conceded to have been authorized under its terms, does not permit a conclusion, as Claimants contend, that Carrier could not take the involved action if such action was otherwise permissible and proper under the provisions of Rule 4-A-7. Resort to the second Rule on which Claimants place some weight (Rule 4-A-1 (a)), dealing with the subject of what constitutes a day's work, compels a like conclusion. In fact such rule contains the express provision that it has application "Unless otherwise provided in this Agreement."

From what has been heretofore related and, as we have previously indicated, it appears that Claimants must stand or fall on decision of the question whether the provisions of Rule 4-A-3 are to be construed as containing anything which precluded the Carrier from taking action (i.e., the action here involved) in conformity with that clearly contemplated and permitted by the provisions of Rule 4-A-7. After an extended review of the record, analysis of the involved Rules of the Agreement on the basis of recognized and established principles of contractual construction, and careful consideration of all arguments advanced by the parties, we have concluded a negative answer to that question is required. Rule 4-A-3 is a general rule specifying and guaranteeing the working days per week for all regularly assigned employes. Rule 4-A-7 is a special rule wherein it is provided that hourly rated employes assigned to regular positions, who are required to report at regular starting time for a day's work and **who are prevented from performing service by conditions beyond the control of Management** will be allowed a minimum of three hours pay at pro rata rates. Of a certainty Rule 4-A-7 complements Rule 4-A-3 to the extent it makes provisions for a situation where under conditions there contemplated the rate of pay of an employe coming within its terms may be fixed at a minimum of three hours. We find no ambiguity in either of such rules. In such a situation the universal rule of contractual construction is that as between general and special provisions of a contract the special controls the general. See Awards Nos. 4959; 5942 and 6003. It cannot be denied that under the confronting facts and circumstances all the essential elements necessary to put Rule 4-A-7 in force and effect appear of record. A strike existed; as a result thereof there was no service for Claimants to perform on the dates in question; they were employes coming within the scope of such rule; and they were paid pursuant to and in conformity with its terms. Under such conditions and circumstances when the facts are tested by the rule we believe the result is inescapable. Therefore we are constrained to hold that Carrier's action in applying such rule did not amount to a violation of the Agreement. In fact it is our view that any other conclusion would result in complete disregard and nullification of Rule 4-A-7 through the process of contractual construction. Such action on our part, as has been frequently indicated in our decisions, is wholly beyond our province. The parties themselves must stand or fall on what they have agreed to through the medium of collective bargaining as subsequently reflected by the terms of the contract to which they have agreed. We cannot legislate or make them a new contract. By the same token we can neither write out something they have included therein nor can we write in something that is not there.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1954.